

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA
CLARKSBURG DIVISION

RANDAL MCCLOY, JR., by
his next friend, Anna McCloy,

Plaintiff,

v.

Civil Action No. 1:06 CV 13

NATIONAL ENQUIRER, INC.; AMERICAN
MEDIA, INC.,

Defendants.

COMPLAINT

Being first duly sworn, Anna McCloy, wife and next friend of Randal McCloy, Jr., avers the following in support of Mr. McCloy's Complaint against Defendants National Enquirer, Inc., and American Media, Inc.:

The Parties

1. Plaintiff Randal McCloy, Jr., is a West Virginia citizen and resident of the town of Simpson in Taylor County.
2. Defendant National Enquirer, Inc., is a Florida corporation, having there its principal place of business.
3. Defendant American Media, Inc., the parent company of National Enquirer, Inc., is a Delaware corporation. On information and belief, its principal place of business is located in New York.

Jurisdiction and Venue

4. This Court may exercise subject matter jurisdiction over the instant dispute in accordance with 28 U.S.C. § 1332(a), because diversity of citizenship exists between Plaintiff and each Defendant, and the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and costs.

5. Defendants are subject to personal jurisdiction in this Court pursuant to West Virginia Code § 56-3-33(a)(3) and West Virginia Code § 31D-15-1501(d)(2), in that they are alleged to have caused tortious injury in West Virginia and to have committed a tort, in whole or in part, in West Virginia. See Calder v. Jones, 465 U.S. 783 (1984); Carefirst of Maryland, Inc. v. Carefirst Pregnancy Centers, Inc., 334 F.3d 390, 397-98 & n.7 (4th Cir. 2003).

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1331(a)(2), because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in the Northern District of West Virginia.

Facts Giving Rise to the Dispute

7. Plaintiff was critically injured in an explosion at the Sago coal mine in Upshur County, West Virginia, on January 2, 2006.

8. Immediately after his rescue and again following a brief transfer to Allegheny General Hospital in Pittsburgh, Plaintiff was treated and had begun recuperating at Ruby Memorial Hospital in Morgantown, West Virginia. During this time, Plaintiff, being in a comatose state, required intensive assistance in processing normal bodily functions, which in turn necessitated his reliance on and connection to myriad medical apparatuses such as breathing and feeding tubes.

9. On information and belief, Defendants provided Plaintiff's brother, Matthew McCloy, with a camera and paid him eight hundred dollars to take a photograph of Plaintiff lying

prone in his hospital bed. At the time, Plaintiff was connected to the various devices sustaining his life, unconscious, and unable to consent to having his photograph taken.

10. Several days later, immediately upon being told of the photograph, Anna McCloy directed that counsel contact Defendants to ask that it not be made public. Defendants ignored Mrs. McCloy's request and the very next day published the photograph on the cover of the January 16, 2006 issue of the *National Enquirer* supermarket tabloid. Accompanying an article on the Sago disaster, the same photograph was again published in the January 30, 2006 issue.

Bases for Relief

11. By virtue of their actions, Defendants have unreasonably intruded upon the seclusion of Plaintiff and have appropriated his likeness for their advantage, thereby invading his privacy and rendering them liable in excess of the jurisdictional amount for injury to his dignity, reputation, and person, and for punitive damages.

WHEREFORE, Randal McCloy, Jr., by his next friend, Anna McCloy, prays that this honorable Court: (i) enter judgment in his favor and against Defendants jointly and severally for compensatory, special, and/or punitive damages in an amount to be proven at trial, but in no event less than Seventy-Five Thousand Dollars (\$75,000); (ii) permanently enjoin Defendants' further publication of the offending photograph; (iii) award Plaintiff the attorney fees and costs associated with the prosecution of this action; and (iv) accord him such other relief as may be deemed just and proper.

PLAINTIFF DEMANDS A TRIAL BY JURY.

Filed this 27th day of January, 2006, at Clarksburg, West Virginia.

Anna McCloy

ANNA MCCLOY,
as next friend to Randal McCloy, Jr.

STATE OF WEST VIRGINIA

COUNTY OF Monongalia, to wit:

This day appeared before me Anna McCloy, who, upon her oath, states that she bears personal witness to the facts recited in the above Complaint, except for those in which she has expressly indicated a belief in their truth based on the information available to her, and that the above-recited facts are true to the best of her knowledge.

Taken, subscribed, and sworn to before me,

Joy L. Pannell a

Notary Public in and for said county and state, this 27th day of January, 2006.

My commission expires:

October 8, 2009

Joy L. Pannell
Notary Public



STEPHEN P. GOODWIN (WV Bar # 1433)
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 friend to Randal McCloy, Jr.

ANNA MCCLOY,
as next friend to Randal McCloy, Jr.

STATE OF WEST VIRGINIA

COUNTY OF _____, to wit:

This day appeared before me Anna McCloy, who, upon her oath, states that she bears personal witness to the facts recited in the above Complaint, except for those in which she has expressly indicated a belief in their truth based on the information available to her, and that the above-recited facts are true to the best of her knowledge.

Taken, subscribed, and sworn to before me, _____, a

Notary Public in and for said county and state, this 27th day of January, 2006.

My commission expires: _____

Notary Public



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